

## REMARKS

Claims 1-40, 42 and 50 have been canceled without prejudice or disclaimer. Claims 51-55 have been added. Claims 41, 44 and 45 have been amended.

It is respectfully submitted that the present amendment presents no new issues or new matter and places this case in condition for allowance. Reconsideration of the application in view of the above amendments and the following remarks is requested.

**I. The Rejection of Claims 41-50 under 35 U.S.C. 112 (Indefinite)**

Claims 41-50 are rejected under 35 U.S.C. 112, second paragraph, as allegedly indefinite. The Examiner states that it is unclear if the recitation "having at least 90% homology to SEQ ID NO:8" refers to the variant or the parent.

Applicants have clarified the claims to indicate that the recitation refers to the variant.

For the foregoing reasons, Applicants submit that the claims overcome this rejection under 35 U.S.C. 112. Applicants respectfully request reconsideration and withdrawal of the rejection.

**II. The Rejection of Claim 45 under 35 U.S.C. 112 (Indefinite)**

Claim 45 is rejected under 35 U.S.C. 112 as indefinite. The Examiner states that the claims encompass many variants which are not included in the scope of the claim from which claim 45 depends.

As amended, claim 45 recites combinations which include a mutation corresponding to K170Q and a mutation of at least one other amino acid recited in claim 41. Applicants respectfully submit that claim 45 encompasses variants which are included within the scope of claim 41.

For the foregoing reasons, Applicants submit that the claims overcome this rejection under 35 U.S.C. 112. Applicants respectfully request reconsideration and withdrawal of the rejection.

**III. The Rejection of Claims 41, 42, 44 and 46-50 under 35 U.S.C. 102(e) (Andersen et al., US PG-PUBS 2003/0129718)**

Claims 41, 42, 44, and 46-50 are rejected under 35 U.S.C. 102(e) as anticipated by Andersen et al., US PG-PUBS 2003/0129718.

Submitted herewith is a declaration of Carsten Andersen, a co-inventor of the instant application and cited US patent publication. The Andersen Declaration provides that inventor Carsten Andersen is the inventor of the subject matter from US PG-PUBS 2003/0129718 which is relied upon in the rejection. Thus, the subject matter relied upon in US PG PUBS 2003/0129718 is

not "by another," and is therefore not prior art to the instant application.

Accordingly, Applicants respectfully requested reconsideration and withdrawal of the rejection under 35 U.S.C. 102(e) as US PG-PUBS 2003/0129718 is not 35 U.S.C. 102(e) prior art to the instant application claims.

**IV. The Rejection of Claim 43 under 35 U.S.C. 103(a) (Andersen et al., US PG-PUBS 2003/0129718)**

Claim 43 is rejected under 35 U.S.C. 103(a) as obvious over Andersen et al., US PG-PUBS 2003/0129718. The Examiner states that although Andersen et al. does not teach specifically which amino acid change to make at position 170, a skilled artisan would have found it obvious given the teaching of Andersen to modify this position to replace the naturally occurring amino acid with all other 19 naturally occurring amino acids.

Submitted herewith is a declaration of Carsten Andersen, a co-inventor of the instant application and cited US patent publication. The Andersen Declaration provides that inventor Carsten Andersen is the inventor of the subject matter from US PG-PUBS 2003/0129718 which is relied upon in the rejection. Thus, the subject matter relied upon in US PG PUBS 2003/0129718 is not "by another," and is therefore not prior art to the instant application.

Accordingly, Applicants respectfully requested reconsideration and withdrawal of the rejection under 35 U.S.C. 103(a) as US PG-PUBS 2003/0129718 is not prior art to the present application claims.

**V. Conclusion**

In view of the above, it is respectfully submitted that all claims are in condition for allowance. Early action to that end is respectfully requested. The Examiner is hereby invited to contact the undersigned by telephone if there are any questions concerning this amendment or application.

Respectfully submitted,

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